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OFFICE OF PETITIONS

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In re Application of :
Goldenberg et al :
Application No. 09/927,416 :
Filed: August 10, 2001 :
Attorney Docket No. IMMR-115A :

DECISION
ON PETITION
37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed April 6, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D).

The instant petition lacks item(s) (1) a proper reply as the RCE filed with the petition did not include payment of the issue fee, which is required. The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed on October 21, 2004, which set a shortened statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on January 22, 2005. A Notice of Abandonment was mailed on March 3, 2005.

The Petitioner is advised that if the petitioner decides to pay for the issue fee in a Renewed petition under 1.137(b) and if the above-identified application is allowed, a request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

While the Revocation and Power of Attorney have been entered, the correspondence does not comply with 37 CFR 3.73(b). In order for an assignee to take action in a case before the Office, compliance with 37 CFR 3.73(b) must be satisfied. More specifically, 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g. copy of an executed assignment submitted for recording) or by specifying (e.g. reel and frame number) where such evidence is recorded in the Office, (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a manner pending before the Office. A blank 37 CFR 3.73(b) accompanies this decision.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Service Window
 Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to Gene Kim at (571) 272-6052 or the undersigned at (571)272-3217.

A handwritten signature in black ink that reads "Karen Christy for". The signature is written in a cursive, flowing style.

Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Blank copy of 37 CFR 3.73(b) form